

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-11-1-5-00250-16
45-004-11-1-5-01143-16
45-004-13-1-5-00337-16
45-004-16-1-5-00467-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-09-234-001.000-004
Assessment Years: 2011, 2013 & 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated his 2011 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 19, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.¹
2. Petitioner initiated his 2013 appeal with the Lake County PTABOA. The PTABOA issued notice of its final determination on November 20, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
3. Petitioner initiated his 2016 appeal with the Lake County PTABOA. The PTABOA issued notice of its final determination on March 9, 2017. On April 24, 2017, Petitioner filed a Form 131 petition with the Board.
4. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
5. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on April 23, 2018. Neither the ALJ nor the Board inspected the property.
6. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Gordona Bauhan, Lake County Hearing Officers, were sworn as witnesses for Respondent.

¹ The PTABOA issued a second determination for 2011 on April 12, 2016. On May 27, 2016, Petitioner filed a second Form 131 with the Board.

Facts

7. The subject property is a vacant residential lot located at 1166 Pyramid Drive in Gary.
8. The PTABOA determined the following assessments for the parcel under appeal:²
 - 2011: \$2,700
 - 2013: \$2,600
 - 2016: \$2,300
9. Petitioner requested an assessed value of \$1,000 for each year at issue.

Record

10. The official record contains the following:
 - a. A digital recording of the hearing,
 - b. Exhibits:

Petitioner Exhibit 1:	Property record card (“PRC”) for the subject property for 2013-2016,
Petitioner Exhibit 2:	PRC for the subject property for 2011-2013,
Respondent Exhibit 1:	Real Property Maintenance Report for 2010 pay 2011,
Respondent Exhibit 2:	Real Property Maintenance Report for 2011 pay 2012,
Respondent Exhibit 3:	Real Property Maintenance Report for 2012 pay 2013,
Respondent Exhibit 4:	Real Property Maintenance Report for 2013 pay 2014,
Respondent Exhibit 5:	Real Property Maintenance Report for 2015 pay 2016,
Respondent Exhibit 6:	Real Property Maintenance Report for 2016 pay 2017,
Respondent Exhibit 7:	GIS map,
Respondent Exhibit 8:	PRC for the subject property for 2013-2017,
Board Exhibit A:	Form 131 petitions and attachments,
Board Exhibit B:	Notices of hearing,

² Both PTABOA determinations for 2011 show an assessed value of \$2,700. However, Petitioner Exhibit 2, the PRC, and Respondent Exhibit 2, the Real Property Maintenance Report, show \$8,500 as the assessed value.

Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
12. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
13. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The assessed value decreased from 2010 to 2011, from 2012 to 2013, and from 2015 to 2016. Consequently, Petitioner has the burden of proof for each year at issue.

Summary of Parties' Contentions

16. Petitioner's case:
 - a. Petitioner contends the subject property consists of an unbuildable lot in a blighted area with a high crime rate. He claims that there is zero interest in development in the area and that a public housing project across the street is boarded up and abandoned and needs to be demolished. *Nowacki testimony*.

- b. Petitioner contends that even though no changes were made to the property, the assessed value decreased from 2011 to 2013. In 2016, the value went down again to \$2,300, which is obviously closer to his requested value of \$1,000. *Nowacki testimony; Pet'r Exs. 1 & 2.*
 - c. Petitioner contends that the over-assessment of properties contributes to the increasing blighted conditions in the city. He contends the city loses 2,000 people every year according to the census. Furthermore, every day a house is lost to abandonment because the assessor refuses to acknowledge conditions in the area and bring the properties to values acceptable to the market. *Nowacki testimony.*
 - d. Petitioner contends this property has been owned by the county since 1991. He claims the property has churned through the tax sale system for twenty years with no market interest until he eventually purchased it. *Nowacki testimony; Pet'r Exs. 1 & 2.*
17. Respondent's case:
- Respondent contends Petitioner failed to present any probative evidence to support the requested value. *Bauhan testimony.*

ANALYSIS

18. Petitioner failed to make a prima facie case for a reduction in the assessed values. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2011 and the 2013 assessments was

March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). The valuation date for 2016 was January 1, 2016. Ind. Code § 6-1.1-2-1.5.

- c. Petitioner contends the property should be assessed at \$1,000 for each year at issue. However, Petitioner presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Petitioner contends the property suffers because of the blighted condition of the area, a high crime rate, and a lack of interest in development. External obsolescence is caused by an influence outside of a property's boundaries that has a negative influence on the property's value. *Clark v. Dep't of Local Gov't Fin.*, 77 N.E.2d 1277 (Ind. Tax Ct. 2002). To receive an adjustment for obsolescence, a property owner must identify the causes of the obsolescence and quantify the amount he believes should be applied to the property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). While Petitioner identified some issues that might be the cause of external obsolescence, he failed to quantify the amount of such obsolescence.
- e. Petitioner had the burden for 2011 and failed to make a prima facie case for changing the assessment. Petitioner also had the burden for 2013 and 2016 and failed to make a prima facie case for either of those years as well. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).a

CONCLUSION

- 19. Petitioner failed to establish a prima facie case for any of the years at issue. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2011, 2013 and 2016 values should not be changed.

ISSUED: July 13, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.